

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Albin Lloyd Kasper, *et al.*

Serial No.: 10/634,403

Filed: August 5, 2003

Title: VARIABLE OPTICAL DELAY LINE WITH A LARGE
CONTINUOUS TRAINING RANGE

Grp./A.U.: 2874

Examiner: Juliana K. Kang

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I hereby certify that this correspondence is being electronically filed with United States Patent and trademark Office on:
October 31, 2006 (Date)

Debbie Sams
(Printed or typed name of person signing the certificate)
Debbie Sams
(Signature of the person signing the certificate)

Sir:

REQUEST FOR RECONSIDERATION UNDER 37 C.F.R. § 1.116

The Applicants have carefully considered this application in connection with the Examiner's Final Rejection mailed August 31, 2006, and respectfully request reconsideration of this application in view of the following remarks.

REMARKS/ARGUMENTS

The Applicants originally submitted Claims 1-9 in the application. In a previous response, the Applicants amended Claims 1-4 and 6-9 and added Claim 10. In the present response, the Applicants have not amended, added or canceled any claims. Accordingly, Claims 1-10 are currently pending in the application.

The Examiner has rejected the terminal disclaimer due to not complying with 37 CFR (b) and/or (c) because it was not signed. The terminal disclaimer now presented with this response does comply with 37 CFR 1.321 (b) and/or (c) and the fee of \$130.00 for filing this terminal disclaimer was submitted with our response of June 23, 2006 and therefore, no fee is due.

I. Rejection of Claims 1-10 based on Nonstatutory Obviousness-Type Double Patenting

The Examiner has rejected Claims 1-10 based on Nonstatutory Obviousness-Type Double Patenting as being unpatentable over Claims 1-7 of U.S. Patent No. 6,956,991 to Madsen for Claims 1-2, 4-7 and 10, and over Claims 1-7 of Madsen in view of U.S. Patent No. 5,943,636 to Baldwin, *et al.* for Claims 3, 8 and 9. In response, the Applicants submit a terminal disclaimer to overcome the nonstatutory obviousness-type double patenting rejections. Accordingly, the Applicants respectfully request the Examiner to withdraw the above rejections and allow issuance of pending Claims 1-10.

II. Conclusion

In view of the foregoing remarks and the submitted terminal disclaimer, the Applicants submit that all of the Claims currently pending in this application are in condition for allowance and therefore earnestly solicit a Notice of Allowance for Claims 1-10.

The Applicants request the Examiner to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present application. The Commissioner is hereby authorized to charge any fees, credits or overpayments to Deposit Account 08-2395.

Respectfully submitted,

HITT GAINES, PC



J. Joel Justiss
Registration No. 48,981

Dated: October 31, 2006

P.O. Box 832570
Richardson, Texas 75083
(972) 480-8800

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**TERMINAL DISCLAIMER TO OBViate A DOUBLE PATENTING
REJECTION OVER A "PRIOR" PATENT**Docket Number (Optional)
KASPER 1-17-26

In re Application of: Albin Lloyd Kasper, et al.

Application No.: 10/634,403

Filed: August 5, 2003

For: VARIABLE OPTICAL DELAY LINE WITH A LARGE CONTINUOUS TRAINING RANGE

The owner*, Lucent Technologies Inc., of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term prior patent No. 6,956,391 as the term of said prior patent is defined in 35 U.S.C. 154 and 173, and as the term of said prior patent is presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of the term of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the prior patent, "as the term of said prior patent is presently shortened by any terminal disclaimer," in the event that said prior patent later:

- expires for failure to pay a maintenance fee;
- is held unenforceable;
- is found invalid by a court of competent jurisdiction;
- is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321;
- has all claims canceled by a reexamination certificate;
- is reissued; or
- is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1. For submissions on behalf of a business/organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the business/organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. The undersigned is an attorney or agent of record. Reg. No. 48,981



Signature

October 31, 2006

Date

J. Joel Justiss
Typed or printed name972-480-8800
Telephone Number

- Terminal disclaimer fee under 37 CFR 1.20(d) included.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).
Form PTO/SB/96 may be used for making this certification. See MPEP § 324.

This collection of information is required by 37 CFR 1.321. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Electronic Acknowledgement Receipt

EFS ID:	1284707
Application Number:	10634403
International Application Number:	
Confirmation Number:	7015
Title of Invention:	Variable optical delay line with a large continuous tuning range
First Named Inventor/Applicant Name:	Albin Lloyd Kasper
Customer Number:	47394
Filer:	James Joel Justiss/Debbie Sams
Filer Authorized By:	James Joel Justiss
Attorney Docket Number:	KASPER 1-17-26
Receipt Date:	31-OCT-2006
Filing Date:	05-AUG-2003
Time Stamp:	15:55:32
Application Type:	Utility

Payment information:

Submitted with Payment	no
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File Listing:

Document Number	Document Description	File Name	File Size(Bytes)	Multi Part /.zip	Pages (if appl.)
1		Amend_5.pdf	225313	yes	3

Multipart Description/PDF files in .zip description					
	Document Description		Start	End	
	Amendment After Final		1	1	
	Applicant Arguments/Remarks Made in an Amendment		2	3	

Warnings:

Information:

2	Terminal Disclaimer Filed	Terminal_Disclaimer.pdf	105311	no	1
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Warnings:

Information:

Total Files Size (in bytes):	330624
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New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.